STATE OF MINNESOTA ENERGY SAVINGS PERFORMANCE CONTRACTING SERVICES MASTER CONTRACT

This Master Contract is between the State of Minnesota, acting through its Commissioner of Commerce ("State") and «OrganizationName», «RepAddress1», «RepAddress2», «RepCity», «State» «Zip_Code» ("Contractor").

Recitals

- 1. Under Minn. Stat. §15.061 and Minn. Stat. §216.1C.02 the State is empowered to engage such assistance as deemed necessary.
- 2. Under Minn. Stat. §16C.144 the State is authorized to enter into guaranteed energy savings performance contracts not exceeding fifteen years for the purpose of implementing comprehensive utility cost-savings measures to improve the energy efficiency of a state facility provided the cost of implementing the measures will not exceed the amount to be saved in utility operation and maintenance costs over a fifteen year period.
- 3. Under Minn. Stat. §16C.144 the State is authorized to enter into a lease purchase agreement for the implementation of the utility cost savings measures in accordance with the guaranteed energy savings contract.
- 4. The State is in need of energy savings performance contracting services as part of its Guaranteed Energy Savings Program (GESP).
- 5. The purpose of this Master Contract is to provide the Contractor the ability to participate in the GESP for the development and implementation of Energy Savings Performance Contracting projects; to ensure the program's standard processes, procedures, and documentation will be used; and to obligate the Contractor to follow and adhere to the guidelines, rules, and provisions of the GESP.
- 6. The Contractor represents that it is duly qualified and agrees to perform all services described in this Master Contract and performed under Work Order Contracts to the satisfaction of the State.

Master Contract

Definitions for use throughout this agreement:

- "Energy Savings Performance Contract" or "ESPC" means Guaranteed Energy Savings Agreement or this Master Contract and Work Order Contract(s) for the implementation of all professional services, equipment and construction for the purchase and installation of utility cost savings measures; and measurement and verification reporting and services, guarantee of performance and cost savings, maintenance and/or repair of equipment, training for facility personnel on maintenance and operation of systems, and training for occupants.
- "Investment Grade Audit" or "IGA" means a detailed audit of State facilities, conducted by the Contractor, to identify ECMs and quantify the associated implementation cost and guaranteed savings, which serves as the basis for the ESPC project proposal; in accordance with the requirements set forth in Exhibit A, Section I.
- "Energy" means energy or water use, or demand.
- "Energy Conservation Measure" or "ECM" means an activity or set of activities designed to increase the energy efficiency of a facility, system or piece of equipment. ECMs may also conserve energy without changing efficiency. Several ECMs may be carried out in a facility at one time, each with a different thrust. An ECM may involve one or more of: physical changes to facility equipment, revisions to operating and maintenance procedures, software changes, or new means of training or managing users of the space or operations and maintenance staff. An ECM is also known as a Utility Cost Saving Measure or UCSM.
- "Guaranteed Savings" means the amount of aggregate Savings to the State in the form of reduced energy and water usage and cost as a result of Contractor's Work on the Project, which shall accrue to the State over the Performance Period, which such amount is guaranteed by Contractor.

MC- «OrganizationName»

- "Measurement and Verification" or "M&V" is the process of using measurements to reliably determine actual savings created within an individual facility by an energy management program. Savings cannot be directly measured, since they represent the absence of energy use. Instead savings are determined by comparing measured use before and after implementation of a project, making appropriate adjustments for changes in conditions.
- "Performance Period" means the time period spanning from final completion to the end of the contract, or for a specific time-frame such as 1-year within that period.
- "State Institution" means any state agency who has executed a Work Order Contract under this Master Contract for the GESP.
- "Work Order Contract" means the Work Orders issued under this Master Contract.

1. Term of Master Contract

- **1.1.** *Effective Date*: «Effective», or the date the State obtains all required signatures under Minn. Stat. § 16C.05, subd. 2, whichever is later.
 - The Contractor must not accept work under this Master Contract until this Master Contract is fully executed and the Contractor has been notified by the State's Authorized Representative that it may begin accepting Work Order Contracts.
- **1.2.** *Work Order Contracts.* The term of work under any Work Order Contracts issued under this Master Contract may not extend beyond the expiration date of this Master Contract.
- 1.3. Expiration Date: «Expires».
- **1.4.** *Survival of Terms*. The following clauses survive the expiration or cancellation of this Master Contract and all Work Order Contracts: 8. Indemnification; 9. State Audits; 10. Government Data Practices and Intellectual Property; 13. Publicity and Endorsement; 14. Governing Law, Jurisdiction, and Venue; and 18. Data Disclosure.

2. Scope of Work

The Contractor, who is not a state employee, may be requested to perform any of the following services under individual Work Order Contracts:

The Scope of Work for this Master Contract may include one or all of the following as described. A complete detailed description of required work will be furnished in each Work Order Contract issued.

Preliminary Project Evaluation

a) Perform an initial evaluation of project potential and discuss with the State Institution.

Investment Grade Audit and Project Proposal

- **b**) Enter into a GESP Work Order Contract to conduct an Investment Grade Audit and Project Proposal (Exhibit A) with the State Institution.
- c) Comply with all requirements of the Investment Grade Audit and Project Proposal Work Order Contract, including but not limited to: conduct an Investment Grade Audit, prepare a detailed technical and financial proposal for the project, help arrange for or procure financing, and develop a measurement and verification plan.
- **d**) Assign individuals to the project team representing project development, engineering, project management, monitoring and verification, and upper management support.
- e) Ensure appropriate personnel attend project development meetings depending upon the subject matter to be discussed.

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- f) The Contractor shall identify and secure on behalf of the State Institution all available energy/demand/water savings and renewable energy utility incentives available to each project. In addition, the Contractor shall provide a utility incentive/rebate summary to the State, in a format prescribed by the State, documenting correspondence with the utility company indicating all incentives that were applied for and secured on behalf of the State Institution including: emails, letters, rebate applications, etc.
- **g**) Address issues, recommendations and requests from the State in support of the GESP independent technical review and facilitation process.

Energy Savings Performance Contract Project Implementation

- **h)** Enter into a GESP Work Order Contract with the State Institution based upon results of the Investment Grade Audit.
- i) Comply with all requirements of the GESP, Work Order Contract and subsequent amendments including but not limited to: design services, equipment procurement and purchasing, construction and construction management services, commissioning services on installed measures and monitoring and verification services.
- **j**) Ensure appropriate personnel attend project development meetings depending upon the subject matter to be discussed.
- **k)** Address issues, recommendations and requests from State in support of the GESP independent technical review and facilitation process.
- 1) Provide the State with an electronic copy of the final contract within 30 days after it is fully executed.
- m) Provide a post-implementation report to State Institution and Commerce.

Performance Period:

- n) Comply with all requirements of the GESP, Energy Savings Performance Contracting Services Work Order Contract and any Amendments thereto, and Guaranteed Energy Savings Agreement, including but not limited to: measurement and verification reporting and services, guarantee of performance and cost savings, maintenance and/or repair of equipment, training for facility personnel on maintenance and operation of systems, and training for occupants.
- **o**) Provide the State Institution and the State with annual reports on project cost, status, savings achieved and square footage impacted by the project in a format prescribed by the State within 90 days of the end of each annual Performance Period.
- **p**) Ensure appropriate personnel attend project development meetings depending upon the subject matter to be discussed.
- **q)** Address issues, recommendations and requests from the State in support of the GESP independent technical review and facilitation process.

The Contractor understands that only the receipt of a fully executed Work Order Contract authorizes the Contractor to begin work under this Master Contract. Any and all effort, expenses, or actions taken before the Work Order Contract is fully executed is not authorized under Minnesota Statutes and is under taken at the sole responsibility and expense of the Contractor. A sample Work Order Contract is attached and incorporated into this Master Contract as Exhibit A.

The Contractor understands that this Master Contract is not a guarantee that the State or a State Institution will enter into a Work Order Contract with the Contractor. The State has determined that it may generally have a need for the services described in and under this Master Contract, but does not commit to selecting the Contractor for a project or spending any money with the Contractor.

3. Time

The Contractor must comply with all the time requirements described in Work Order Contracts. In the performance of Work Order Contracts, time is of the essence.

4. Consideration and Payment

- 4.1. *Consideration*. The State will pay for all services satisfactorily performed by the Contractor for all Work Order Contracts issued under this Master Contract unless recommendations provided in the Investment Grade Audit are not, in the sole discretion of the State, deemed reasonable and viable.
- 4.2. *Travel Expenses*. Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Contractor as a result of any Work Order Contract will be reimbursed in same manner and in no greater amount than provided in the current "Commissioner's Plan" promulgated by the commissioner of Employee Relations. The Contractor will not be reimbursed for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state.

4.3. Payment

- 4.3.1. *Invoices*. The State will promptly pay the Contractor after the Contractor presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services. Invoices must be submitted timely no more frequently than monthly.
- 4.3.2. *Retainage*. Under Minn. Stat. § 16C.08, subd. 5(b), no more than 90 percent of the amount due under any Work Order Contract may be paid until the final product of the Work Order Contract has been reviewed by the State's agency head. The balance due will be paid when the State's agency head determines that the Contractor has satisfactorily fulfilled all the terms of the Work Order Contract.

5. Conditions of Payment

All services provided by the Contractor under a Work Order Contract must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Contractor will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

6. Authorized Representatives and Project Managers

The State's Authorized Representative for this Master Contract is **«StateContact»**, **«StateTitle»**, **«StatePhone»**, or their successor, and has the responsibility to monitor the Contractor's performance.

The State's Project Manager will be identified in each Work Order Contract.

The Contractor's Authorized Representative is **«Rep»**, **«RepTitle»**, **«RepPhone»**, or their successor. If the Contractor's Authorized Representative changes at any time during this Master Contract, the Contractor must immediately notify the State.

The Contractor's Project Manager will be identified in each Work Order Contract.

7. Assignment, Amendments, Waiver, and Contract Complete

7.1. Assignment. The Contractor may neither assign nor transfer any rights or obligations under this Master Contract or any Work Order Contract without the prior consent of the State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this Master Contract, or their successors in office.

- 7.2. *Amendments*. Any amendment to this Master Contract or any Work Order Contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original contract, or their successors in office.
- 7.3. *Waiver*. If the State fails to enforce any provision of this Master Contract or any Work Order Contract, that failure does not waive the provision or its right to enforce it.
- 7.4. *Contract Complete.* This Master Contract and any Work Order Contract contain all negotiations and agreements between the State and the Contractor. No other understanding regarding this Master Contract or Work Order Contract, whether written or oral, may be used to bind either party.

8. Indemnification

In the performance of this contract by Contractor, or Contractor's agents or employees, the Contractor must indemnify, save, and hold harmless the State, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by the State, to the extent caused by Contractor's or Contractor's agents or employees:

- 1) Intentional, willful, or negligent acts or omissions; or
- 2) Actions that give rise to strict liability; or
- 3) Breach of contract or warranty.

The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of the State's sole negligence. This clause will not be construed to bar any legal remedies the Contractor may have for the State's failure to fulfill its obligation under this contract.

9. State Audits

Under Minn. Stat. § 16C.05, subd. 5, the Contractor's books, records, documents, and accounting procedures and practices relevant to any Work Order Contract, addendum thereto, and any related document such as a Guaranteed Energy Savings Agreement, are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Master Contract.

10. Government Data Practices and Intellectual Property

10.1. *Government Data Practices*. The Contractor and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State under any Work Order Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor under the Work Order Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either the Contractor or the State.

If the Contractor receives a request to release the data referred to in this Clause, the Contractor must immediately notify the State. The State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released.

10.2. Intellectual Property Rights and Obligations

10.2.1. *Pre-Existing Intellectual Property*. State and Contractor shall each retain ownership of, and all rights, title and interest in, their respective pre-existing intellectual property and all derivative works arising there from, subject to any license rights and ownership rights contained herein or otherwise executed between the parties.

10.2.2. Intellectual Property Rights. The State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents created and paid for under Work Order Contracts. Works means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Contractor, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this Master Contract or any Work Order Contract. Works includes "Documents." Documents are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Contractor, its employees, agents, or subcontractors, in the performance of a Work Order Contract. The Documents will be the exclusive property of the State and all such Documents must be immediately returned to the State by the Contractor upon completion or cancellation of the Work Order Contract. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." The Contractor assigns all right, title, and interest it may have in the Works and the Documents to the State. The Contractor must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State's ownership interest in the Works and Documents.

10.2.3 Obligations

- 10.2.3.1 Notification. Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Contractor, including its employees and subcontractors, in the performance of the Work Order Contract, the Contractor will immediately give the State's Authorized Representative written notice thereof, and must promptly furnish the Authorized Representative with complete information and/or disclosure thereon.
- 10.2.3.2 Representation. The Contractor must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of the State, and that neither Contractor nor its employees, agents, or subcontractors retain any interest in and to the Works and Documents. The Contractor represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 8, the Contractor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Contractor's expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. The Contractor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Contractor's or the State's opinion is likely to arise, the Contractor must, at the State's discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

11. Affirmative Action Requirements for Contracts in Excess of \$100,000 and if the Contractor has More than 40 Full-time Employees in Minnesota or its Principal Place of Business

The State intends to carry out its responsibility for requiring affirmative action by its Contractors.

- 11.1. *Covered Contracts and Contractors*. If the Contract exceeds \$100,000 and the contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principle place of business, then the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. Rule Parts 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.
- 11.2. *Minn. Stat.* § 363A.36. Minn. Stat. § 363A.36 requires the Contractor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights ("Commissioner") as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

11.3. Minn. Rule Parts 5000.3400-5000.3600.

- 11.3.1. *General*. Minn. Rule Parts 5000.3400-5000.3600 implement Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. Rule Parts 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.
 - 11.3.2. *Disabled Workers*. The Contractor must comply with the following affirmative action requirements for disabled workers.
 - 11.3.2.1. The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
 - 11.3.2.2. The Contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - 11.3.2.3. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - 11.3.2.4. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

- 11.3.2.5. The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Minn. Stat. § 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.
- 11.3.3. *Consequences*. The consequences for the Contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this contract by the Commissioner or the State.
- 11.3.4. *Certification*. The Contractor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. Rule Parts 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

12. Workers' Compensation and Other Insurance

- A. Contractor shall not commence work under the contract until it has obtained all the insurance described below and the State of Minnesota has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of the contract.
- B. Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:
 - 1. Workers' Compensation Insurance: Except as provided below, Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance minimum limits are as follows:

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$100,000 – Bodily Injury by Disease per employee
$500,000 – Bodily Injury by Disease aggregate
$100,000 – Bodily Injury by Accident
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If Minnesota Statute 176.041 exempts Contractor from Workers' Compensation insurance or if the Contractor has no employees in the State of Minnesota, Contractor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Contractor from the Minnesota Workers' Compensation requirements.

If during the course of the contract the Contractor becomes eligible for Workers' Compensation, the Contractor must comply with the Workers' Compensation Insurance requirements herein and provide the State of Minnesota with a certificate of insurance.

2. **Commercial General Liability Insurance**: Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the Contractor or by a subcontractor or by anyone directly or indirectly employed by the Contractor under the contract. Insurance **minimum** limits are as follows:

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$2,000,000 – per occurrence
$2,000,000 – annual aggregate
$2,000,000 – annual aggregate – Products/Completed Operations
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The following coverages shall be included:

Premises and Operations Bodily Injury and Property Damage
Personal and Advertising Injury
Blanket Contractual Liability
Products and Completed Operations Liability
Other; if applicable, please list
State of Minnesota named as an Additional Insured

3. **Commercial Automobile Liability Insurance**: Contractor is required to maintain insurance protecting it from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this contract, and in case any work is subcontracted the Contractor will require the subcontractor to maintain Commercial Automobile Liability insurance. Insurance **minimum** limits are as follows:

\$2,000,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included:

Owned, Hired, and Non-owned Automobile

4. **Professional/Technical, Errors and Omissions, and/or Miscellaneous Liability Insurance**This policy will provide coverage for all claims the Contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Contractor's professional services required under the contract.

Contractor is required to carry the following **minimum** limits:

\$2,000,000 – per claim or event \$2,000,000 – annual aggregate

Any deductible will be the sole responsibility of the Contractor and may not exceed \$50,000 without the written approval of the State. If the Contractor desires authority from the State to have a deductible in a higher amount, the Contractor shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that the State can ascertain the ability of the Contractor to cover the deductible from its own resources.

The retroactive or prior acts date of such coverage shall not be after the effective date of this Contract and Contractor shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by Contractor to fulfill this requirement.

C. Additional Insurance Conditions:

• Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of Contractor's performance under this contract;

- If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless Contractor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State of Minnesota;
- Contractor is responsible for payment of Contract related insurance premiums and deductibles;
- If Contractor is self-insured, a Certificate of Self-Insurance must be attached;
- Contractor's policy(ies) shall include legal defense fees in addition to its liability policy limits, with the exception of B.4 above;
- Contractor shall obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota; and
- An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor's policy limits to satisfy the full policy limits required by the Contract.
- D. The State reserves the right to immediately terminate the contract if the Contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the Contractor. In the event of a claims dispute, all insurance policies must be open to inspection by the State, and copies of policies must be submitted to the State's authorized representative upon written request.
- E. The successful responder is required to submit Certificates of Insurance acceptable to the State of Minnesota as evidence of insurance coverage requirements prior to commencing work under the contract.
- F. Further, the Contractor certifies that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to workers' compensation insurance coverage. The Contractor's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees or agents are in no way the State's obligation or responsibility.

13. Publicity and Endorsement

- 13.1 *Publicity*. Any publicity regarding the subject matter of a Work Order Contract must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from a Work Order Contract.
- 13.2 *Endorsement*. The Contractor must not claim that the State endorses its products or services.

14. Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this Master Contract and all Work Order Contracts. Venue for all legal proceedings arising out of this Master Contract and/or any Work Order Contracts, or any amendment thereto, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

15. Subcontractors

- 15.1. Subcontractual Relations. By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume towards the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contact Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Subsubcontractors.
- 15.2. *Payment to Subcontractors*. (If applicable) As required by Minn. Stat. § 16A.1245, the prime contractor must pay all subcontractors, less any retainage, within 10 calendar days of the prime contractor's receipt of payment from the State for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

16. Minn. Stat. § 181.59

The vendor will comply with the provisions of Minn. Stat. § 181.59 which requires:

Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the contractor agrees: (1) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; (2) That no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color; (3) That a violation of this section is a misdemeanor; and (4) That this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

17. Termination

17.1 *Termination by the State*. The State or Commissioner of Administration may cancel this Master Contract and any Work Order Contracts at any time, with or without cause, upon 30 days' written notice to the Contractor. Upon termination, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

17.2 *Termination for Insufficient Funding*. The State may immediately terminate this Master Contract and any Work Order Contract if it does not obtain funding from the Minnesota legislature or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Contractor. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the Master Contract or work order is terminated because of the decision of the Minnesota legislature or other funding source, not to appropriate funds. The State must provide the Contractor notice of the lack of funding within a reasonable time of the State's receiving that notice.

18. Data Disclosure

Under Minn. Stat. §270C.65, and other applicable law, the Contractor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Contractor to file state tax returns and pay delinquent state tax liabilities, if any.

19. Order of Precedent

Should the terms of this Contract conflict with the terms of any Exhibit, Appendix, or Attachment hereto, the terms set forth in this Contract shall prevail. Parties agree that the terms of any subsequent Work Order shall not be drafted nor construed to diminish or derogate the terms and conditions set forth in this Contract, unless explicitly stated herein.

3. MN DEPARTMENT OF COMMERCE
Individual certifies that funds have been encumbered as required by

(with delegated authority)

Minnesota Statutes, Sections 16A.15 and 16C.05.

1. STATE ENCUMBRANCE VERIFICATION

Individual certifies that funds have been encumbered as required by Minnesota Statutes, Sections 16A.15 and 16C.05.

(with delegated authority)

(
Signed:	By:
Date:	Title:
CFMS:	Date:
2. «ORGANIZATIONNAME» The Contractor certifies that the appropriate person(s) have executed the contract on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.	4. MN DEPT. OF ADMINISTRATION As delegated to Materials Management Division
By:	By:
Title:	Date:
Date:	
By:	Distribution: MN Dept. of Commerce, Accounting Dept. MN Department of Administration, MMD
Title:	Contractor State Authorized Representative
Date:	

(Sample Work Order Contract)

STATE OF MINNESOTA WORK ORDER CONTRACT

This work order contract is between the State of Minnesota, acting the	hrough its
("State Institution") and Organization, Address, City, State, Zip ("Co	ontractor"). This work order contract is
issued under the authority of Master Contract T-Number,	Contract Number #####, and is subject to
all provisions of the master contract which is incorporated by referen	nce.

Work Order Contract

1. Term of Contract

1.1 *Effective date*: **Effective**, or the date the State Institution obtains all required signatures under Minn. Stat. § 16C.05, subd. 2, whichever is later.

The Contractor must not begin work under this contract until this contract is fully executed and the Contractor has been notified by the State Institution's Authorized Representative to begin the work.

1.2 *Expiration date*: Expires, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

2. Contractor's Duties

The Contractor, who is not a state employee, will perform the duties specified in Exhibit A which is attached and incorporated into this work order contract.

3. Consideration and Payment

3.1. Consideration

The State Institution will pay for all services performed by the Contractor an amount not to exceed the lesser of the total obligation specified in this clause or the product derived from the calculation specified in Exhibit B, which is attached and incorporated into this work order contract unless recommendations provided in the Investment Grade Audit report are not, in the sole discretion of the State, deemed reasonable and viable.

- 3.1.1 *Compensation.* The Contractor will be paid for actual eligible costs incurred, not to exceed **WORD WORD Thousands** dollars (\$«Total»).
- 3.1.2 *Travel Expenses*. Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Contractor as a result of this work order contract will be reimbursed in same manner and in no greater amount than provided in the current "Commissioner's Plan" promulgated by the commissioner of Employee Relations. The Contractor will not be reimbursed for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state, and will not exceed **WORD WORD Hundreds** dollars (\$«Total»).
- 3.1.3 *Total Obligation*. The total obligation of the State Institution for all compensation and reimbursements to the Contractor under this work order contract will not exceed **WORD Thousands** dollars (\$«Total»).

3.2. Payment

3.2.1. *Invoices*. The State Institution will promptly pay the Contractor after the Contractor presents an itemized invoice for the services actually performed and the State Institution's Authorized Representative accepts the invoiced services. Invoices must be submitted timely and according to the following schedule outlined in Exhibit A.

3.2.2. *Retainage*. Under Minn. Stat. § 16C.08, subd. 5(b), no more than 90 percent of the amount due under any work order contract may be paid until the final product of the work order contract has been reviewed by the State Institution's agency head. The balance due will be paid when the State's agency head determines that the Contractor has satisfactorily fulfilled all the terms of the work order contract.

4. Project Managers

The State Institution's Authorized Representative is **State Contact**, State Title, State Phone, or their successor. The State Institution's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Contractor's Authorized Representative is Authorized successor. If the Contractor's Authorized Representative contract, the Contractor must immediately notify the	
The Contractor's Project Manager is(phone), or their successor. If the Contractor's order contract, the Contractor must immediately not	(name),
1. STATE INSTITUTION ENCUMBRANCE VERIFICATION Individual certifies that funds have been encumbered as required by Minnesota Statutes, Sections 16A.15 and 16C.05 (with delegated authority)	3. STATE INSTITUTION Individual certifies that funds have been encumbered as required by Minnesota Statutes, Sections 16A.15 and 16C.05 (with delegated authority)
Signed:	By:
Date:	Title:
CFMS:	Date:
 ORGANIZATION The Contractor certifies that the appropriate person(s) have executed the contract on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances. 	4. MN DEPT. OF COMMERCE
By:	By:
Title:	Title:
Date:	Date:
Ву:	
Title:	
Date:	

Contractor's Duties for Investment Grade Audit and Energy Savings Contract Proposal

The Contractor shall do all things necessary to complete an Investment Grade Audit (IGA) and an Energy Savings Performance Contract (ESPC) Proposal for the following facilities (the Facilities):

- 1. Facility X, Building Y
- 2. Facility X Building Z

In the performance of its duties, the Contractor shall provide all services necessary and reasonable to complete the following tasks. When these duties permit the Contractor to determine if an action is necessary, the Contractor will make such determination as would a reasonable and prudent person possessing knowledge and expertise of the subject matter.

Upon reasonable and timely request, to the extent permitted by the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, the State Institution agrees to provide to the Contractor relevant information, data, drawings and plans held by or accessible to the State Institution, and to provide access to the Facilities and its staff and occupants at reasonable, mutually agreed times.

1. Task #1: Preliminary Assessment of Needs and Opportunities

- 1.1. Meet with State Institution representative(s) to establish work plans, schedules and milestones, communication procedures, and meet and confer requirements.
- 1.2. Collect data and background information from the State Institution concerning facilities operation and energy use for the most recent three years from the effective date of this Work Order Contract. The State Institution shall provide to the Contractor, upon reasonable request, accurate and complete data and information held by or accessible to the State Institution. Where information is not available from State Institution, Contractor will make a diligent effort to collect such information through the other means such as facility inspection, staff interviews and utility -providers' records. The State Institution shall provide data release authorization(s) to the Contractor for relevant data held by other entities, including but not limited to utility, fuel, material and service providers. Contractor shall assess the validity and accuracy of information provided and to confirm or correct as needed.

Data and background information to be collected includes but is not limited to:

- 1.2.1. Building square footage;
- 1.2.2. Construction data of buildings and major additions including building envelope;
- 1.2.3. Utility provider invoices:
- 1.2.4. Occupancy and usage information;
- 1.2.5. Descriptions of all energy-consuming or energy-saving equipment used energy management procedures practiced at or by the Facilities;
- 1.2.6. Description of any energy or water use related improvements completed or currently being implemented;
- 1.2.7. Description of any changes made to the structure of the Facilities or its energy-using or water-using equipment during the baseline period;
- 1.2.8. Description of future plans regarding building modifications or equipment modifications and replacements;
- 1.2.9. Drawings, as available including mechanical, plumbing, electrical, building automation and temperature controls, structural, architectural, modifications and remodels;
- 1.2.10. Original construction submittals and factory data such as specifications and pump curves as available.
- 1.2.11. Operating engineer logs, maintenance work orders and like materials, as available.
- 1.2.12. Records of maintenance expenditures for energy-using or related equipment, including service contracts.
- 1.2.13. Prior completed energy audits or studies, if any.
- 1.3. Perform a preliminary walk-through of the Facilities and interview staff and occupants to identify potential energy and water saving measures.

- 1.3.1. Interview the Facilities management, maintenance staff, subcontractors and occupants of each building regarding:
 - a) Facilities operation, including energy management procedures.
 - b) Equipment maintenance problems;
 - c) Comfort problems and requirements;
 - d) Equipment reliability;
 - e) Projected equipment needs;
 - f) Occupancy and use schedules for the Facilities and specific equipment therein; and
 - g) Completed, current, planned and anticipated Facility improvements.
- 1.3.2. Survey major energy-using equipment, including but not limited to:
 - a) lighting (indoor and outdoor);
 - b) heating and heat distribution systems;
 - c) cooling systems and related equipment;
 - d) automatic temperature control systems and equipment;
 - e) air distribution systems and equipment, outdoor air ventilation systems and equipment, exhaust systems and equipment;
 - f) hot water systems;
 - g) electric motors, transmission and drive systems;
 - h) special systems such as kitchen/dining equipment;
 - i) water consuming systems such as restroom fixtures, water fountains, irrigation systems;
 - j) renewable energy systems; and
 - k) any other major energy using systems,
- 1.3.3. Perform surveys outside of normal business hours and/or on weekends when necessary, and subject to prior approval of the State Institution, to verify Facilities systems and occupancy schedules.
- 1.3.4. Develop a preliminary list of potential energy and water saving measures, with consideration given to the following for each system:
 - a) Comfort and maintenance problems;
 - b) Energy use, loads, proper sizing, efficiencies and hours of operation;
 - c) Current operating condition;
 - d) Remaining useful life;
 - e) Feasibility of system replacement;
 - f) Hazardous materials or other environmental concerns that may be present;
 - g) Future plans for equipment replacement or building renovations and use;
 - h) Facilities operation and maintenance procedures that could be affected; and
 - i) Capability to effectively monitor performance and verify savings.

Contractor shall assess the validity and accuracy of information provided and shall verify or correct the information as needed.

1.4. Meet with State Institution representative(s) to present prelminary findings and negotiate agreement on energy and water saving measures to be analyzed.

2. Task #2: Preliminary Analysis of Measures

- 2.1. Establish base year consumption and reconcile with end-use consumption estimates.
 - 2.1.1. Establish base year consumption by examining relevant utility and fuel provider bills for the past three years, including but not limited to electricity, building heating fuels, steam and water. Establish base year consumption as appropriate in:
 - a) energy units such as kilowatt-hours of usage, kilowatts of demand;
 - b) physical units of fuel, such as "hundred cubic feet" (ccf) or gallon;
 - c) energy content, such as therms or British thermal units (Btus);
 - d) cost structure, such as firm or interruptible;
 - e) cost per unit and cost per billing period; and
 - f) cost per square foot of conditioned space.

The Contractor shall consult with facility personnel or other parties as needed to identify and account for any anomalous schedule or operating conditions that could affect an accurate base year representation, such as significant occupancy or use changes or periods of time when relevant equipment was malfunctioning, repaired or replaced.

- 2.1.2. Estimate loading, usage and/or hours of operation for all major end uses of total facility energy and water consumption, including but not limited to: lighting, heating, cooling, motors (fans and pumps), plug loads, and other major energy and water using equipment. Where loading or usage is highly variable (such as cooling loads), the Contractor may use its best judgment to determine if direct measurement or monitoring is appropriate. However, the Contractor may not assume that equipment run hours equal the operating hours of the building(s) or facility staff estimates.
- 2.1.3. Reconcile actual annual end-use loads and consumption with the calculated base year loads and consumption and modify calculated base year values as needed to conform actual loads and consumption..
- 2.1.4. Propose adjustments to the baseline for energy and water saving measures that will be implemented in the future.
- 2.1.5. Provide a detailed description of the process(es), calculations, variables and adjustment factors used to establish the base year consumption .
- 2.2. Within ninety (90) days of the effective date of this Work Order Contract, develop and submit to the State Institution a preliminary analysis of potential energy and water saving measures.
 - 2.2.1. Provide a comprehensive list of all potential energy and water saving measures including but not limited to: lighting systems, heating/ventilating/air conditioning equipment and distribution systems, controls systems, building envelope, motors, kitchen equipment, pools, renewable energy systems, other special equipment, irrigation systems, and water saving devices.
 - 2.2.2. For each measure, prepare a preliminary estimate of energy or water cost savings including description of analysis methodology, supporting calculations and assumptions used to estimate savings.
 - 2.2.3. Identify those measures which are reasonably likely to be cost effective and therefore warrant detailed analyses.
- 2.3. Meet with State Institution representative(s) to present preliminary findings and recommendations, and to establish agreement on measures, if any, to include in the detailed analysis and audit report. Provide information on potential project economics, including but not limited to an assessment of energy use, savings potential, project opportunities, recommended measures for further analysis, and the Contractor's assessment of its potential to develop an energy savings contract proposal that conforms to the requirements of this Work Order Contract. The State Institution may accept in whole or in part, or may reject the Contractor's analysis or recommendations if the Contractor's analysis or recommendations do not meet the requirements of the State Institution's Work Order Contract.

3. Task #3: Detailed Analysis and Investment Grade Audit Report

- 3.1. Upon acceptance by the State Institution of the preliminary findings and recommendations, the Contractor shall perform a detailed analysis of the potential savings and costs for each accepted energy and water saving measure. In performing its detailed analysis, the Conractor shall:
 - 3.1.1. Use appropriate American Society of Heating, Refrigeration and Air-conditioning Engineers or other nationally-recognized analysis and calculation methodologies for each measure analyzed.
 - 3.1.2. Use assumptions, estimates, projections and baselines which best represent the true value of each measure's future energy or operational savings and the true cost of implementing each measure. Include accurate marginal costs for each unit of savings, documentation of material and labor cost savings, adjustments to the baseline if necessary to reflect current conditions at the facility, and calculations which account for any interactive effects of the recommended measures.
 - 3.1.3. Use best judgment regarding the employment and duration of instrumentation to achieve an accurate and faithful characterization of energy use.
 - 3.1.4. Use markups and fees no greater than those specified in Exhibit B, Contractor's Fees, in all cost estimates.
 - 3.1.5. Develop a preliminary measurement and verification plan for each measure in accordance with Attachment 2, Measurement and Verification Guidelines, incorporated herein.
 - 3.1.6. Comply with Scope Requirements and Guidelines set forth in Section II of this Exhibit A.
- 3.2. Upon the State Institution's acceptance of the preliminary findings and recommendations, the Contractor shall prepare a preliminary Investment Grade Audit Report containing detailed technical and financial data and calculations sufficient to complete an Energy Savings Performance Contract Proposal. The report shall include but is not limited to:
 - 3.2.1. Report overview and summary including:
 - a) Contact information;

- b) Summary table of recommended energy and water saving measures, with itemization for each measure of total design and construction cost, annual maintenance cost, the first year cost avoidance (in dollars and energy units), simple payback and equipment service life;
- c) Summary of annual energy and water use by fuel type and costs of existing or base year condition;
- d) Calculation of cost savings expected if all recommended measures are implemented, and percentage savings of total facility energy cost;
- e) Description of the existing facilities and mechanical and electrical systems;
- f) Summary description of each recommended measure, including estimated costs and savings;
- g) Discussion of measures considered but not investigated in detail; and
- h) Conclusions and recommendations.
- 3.2.2. Base year energy use including:
 - a) Description and itemization of current billing rates, including schedules and riders;
 - b) Summary of all utility billings;
 - c) Identification and definition of base year consumption and description of how it was established;
 - d) Reconciliation of estimated end use consumption (i.e. lighting, cooling, heating, fans, plug loads, etc.) with calculated base year consumption, include discussion of any unusual findings.
- 3.2.3. Full description of each energy and water saving measure including:
 - a) Existing conditions;
 - b) Description of equipment to be installed and how it will function;
 - c) Estimated useful service life of new equipment;
 - d) Discussion of facility operations and/or maintenance procedures that will be affected by a measure's installation or implementation;
 - e) Recommended installation and implementation plan;
 - f) Savings calculations including:
 - (1) Base year energy use and cost;
 - (2) Post-retrofit annual energy use and cost;
 - (3) Savings estimates including analysis methodology, supporting calculations, formulas, assumptions and key data used;
 - (4) Annual savings estimated for each year of the proposed contract period. Savings estimates must be attributed to the time period(s) in which they are actually realized, and must conform to any limitations on savings estimates specified by the State Institution;
 - (5) Description and calculations for any proposed utility rate changes attributable to the proposed measure;
 - (6) Explanation of how savings interactions between retrofit options are accounted for in calculations; and
 - (7) Operation and maintenance savings, including detailed calculations and description.
 - g) If a computer simulation is used to estimate savings potential, the Contractor shall provide a concise description of the simulation program and methodology and list key input data. At the State Institution's request, the Contractor shall provide access to the program and all assumptions and inputs used, and/or printouts of all input files and relevant output files and documentation sufficient to explain how the savings estimates are derived from the simulation program output.
 - h) Cost estimates and detailed scope of the construction work needed, suitable for cost estimating. Provide specifications for major mechanical components as well as detailed lighting and water fixture counts. Include all anticipated costs associated with installation and implementation:
 - (1) Engineering and/or design costs;
 - (2) Contractor/vendor estimates for labor, materials, and equipment; include any anticipated special provisions, such as overtime or shift differential pay, if necessary to accomplish the work within any operational or time restrictions specified by the State Institution;
 - (3) Permit costs;
 - (4) Construction management fees; and
 - (5) Environmental costs or benefits, such as waste handling and disposal or environmental credits.
 - i) Relevant conclusions, observation or caveats.
 - j) Preliminary commissioning plan in conformance with requirements provided in Attachment 3, System Start-up and Commissioning Requirements, incorporated herein.
 - k) Preliminary measurement and verification plan in conformance with Attachment 2, Measurement and Verification Guidelines.

- 1) Discussion of impacts that facility would incur after contract ends, including, but not limited to operation and maintenance impacts and responsibilities, and staffing and budget impacts.
- m) Compatibility of existing control systems and equipment with proposed improvements. Provide brand name and model of any existing controls system if proposed controls systems modifications will have to be compatible with that control system, and note if a sole-source procurement will be necessary to maintain system compatibility.
- n) Appendices that fully document the data used to prepare the analyses and the sources and methods employed to collect the data.
- 3.3. Within 90 days of the State Institution's acceptance of the preliminary findings and recommendations, the Contractor shall meet with State Institution to present the preliminary Investment Grade Audit Report.
 - 3.3.1. Review the recommendations, savings calculations and impact of the measures on the operations of the Facilities.
 - 3.3.2. Specify how the estimated project costs and savings meet the State Institution's terms for completing the Investment Grade Audit and Energy Savings Performance Contract Proposal.
- 3.4. Upon acceptance by the State Institution of the preliminary Investment Grade Audit Report, prepare and present final Investment Grade Audit Report within ninety (90) days of acceptance.

4. Task #4: Develop Energy Savings Performance Contract Proposal

- 4.1. The Contractor shall prepare an Energy Savings Performance Contract Proposal to design, install, and monitor the energy and water saving measures proposed in the Investment Grade Audit Report, Contractor shall prepare a proposal for terms to be incorporated in a Energy Savings Performance Contract in conformance with Exhibit A, Section II of the Work Order Contract, to include:
 - 4.1.1. Project Price: the total amount State Institution will pay for the project and Contractor's services. The price must not exceed the maximum markups, margins and fees established in the Master Contract (Attachment 1). Costs may include: engineering, designing, staging, packaging, procuring, installing of measures; performance/payment bond costs; construction management fees; commissioning costs; maintenance fees; monitoring fees; training fees; legal services; overhead and profit; other markups.
 - 4.1.2. Complete list of services that will be provided as related to each cost.
 - 4.1.3. Expected term of the Energy Savings Performance Contract.
 - 4.1.4. Description of financing options and recommendations including available interest rates and financing terms, based on interest rates likely to be available to State Institution at the time, and based on a 60-day and 90-day lock option. The ESCO will competitively solicit financing companies on behalf of the State Institution using the Financing Bid Package in a format prescribed by the State. A separate lease purchase agreement will be developed including ESCO payment schedules and lender financing terms and schedules.
 - 4.1.5. Explanation of how the savings will be calculated and adjusted due to weather (such as heating and cooling degree days), occupancy or other factors.
 - 4.1.6. Analysis of annual cash flow for State Institution during the contract term.

Scope Guidelines and Requirements for Energy Savings Performance Contract (ESPC) proposal

- 1. **Energy Savings Performance Contract Term.** An Energy Savings Performance Contract shall have a term no greater than permitted under Minnesota Statute and each discreet Energy Conservation Measure (ECM) within an ESPC shall have a simple payback no greater than the estimated service life of the ECM.
- 2. **Annual guaranteed energy and cost savings.** The annual guaranteed energy and cost savings shall be based on savings attributable to all energy saving measures and, in each year of the contract period, must equal or exceed the total annual contract cost to the State Institution during that year. Total annual contract cost includes, but is not limited to, debt service, Contractor fees, maintenance services, and measurement & verification services. The Contractor shall propose annual savings guarantees covering the full term of the proposed ESPC.
- 3. **Independent third-party review.** Contractor shall reserve 2% of annually guaranteed savings for State Institution, at its sole discretion, to hire an independent third-party professional to review the Contractor's measurement and verification reports and advise State Institution of compliance in measuring and verifying savings.
- 4. **Excess savings.** Annual cost savings beyond the guaranteed minimum savings shall be retained by State Institution, and may not be allocated to fulfill guarantee shortfalls in another performance period.
- 5. **Annual savings estimates.** The annual savings estimates for all measures must be estimated for each applicable year during the contract period.
- 6. **Allowable cost and savings factors.** The State or State Institution may incorporate limitations to allowable costs.
 - a) Payment sources that can be incorporated:
 - 1. Energy and water cost savings.
 - 2. Material/commodity savings, including scheduled replacement of parts (only for years that these cost savings are applicable).
 - 3. Outside labor cost savings, including maintenance contracts.
 - 4. Deferred maintenance cost (State Institution's sole discretion). State Institution must delineate what budget will fund these future savings.
 - 5. Offset of future capital cost (State Institution's sole discretion). State Institution must delineate what budget will fund these future savings.
 - 6. Outside incentive funds (utility incentives, grants, rebates, etc.).
 - 7. Any savings related to maintenance and operation of the facilities will be limited to those that can be thoroughly documented.
 - b) Additional factors related to establishing savings that cover all costs:
 - 1. Escalation rates as specified by the State Institution.
 - 2. Interest costs.
 - 3. State Institution cash outlay at the State Institution's sole discretion.
 - c) The maximum markup costs as specified in Attachment 1, Master Contract.

7. Prevailing Wages.

7.1. Pursuant to Minnesota Statutes 177.41 to 177.44 and corresponding Minnesota Rules 5200.1000 to 5200.1120, this contract is subject to the prevailing wages as established by the Minnesota Department of Labor and Industry. Specifically, all contractors and subcontractors must pay all laborers and mechanics the established prevailing wages for work performed under the contract. Failure to comply with the aforementioned may result in civil or criminal penalties.

The prevailing hours of labor may not be more than eight hours per day or more than 40 hour per week. Pursuant to Minnesota Statutes 177.43, "No laborer or mechanic employed directly on the project work site by the Contractor or any subcontractor, agent or other person doing or contracting to do all or a part of the work of the project, is permitted or required to work more hours than the prevailing hours of

labor, unless paid for all hours in excess of the prevailing hours at a rate of at least 1-1/2 times the hourly basic rate of pay; and a laborer or mechanic may not be paid a lesser rate of wages than the prevailing wage rate in the same or most similar trade or occupation in the area." Nothing in this Contract shall be construed as prohibiting the Contractor or subcontractor paying a higher negotiated wage rate. This requirement does not apply to wage rates and hours of employment of laborers or mechanics who process or manufacture materials or products or to the delivery of materials or products by or for commercial establishments which have a fixed place of business from which they regularly supply processed or manufactured materials or products. This section applies to laborers or mechanics who deliver mineral aggregate such as sand, gravel, or stone which is incorporated into the work under the contract by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle.

- 7.2. To facilitate compliance pursuant to the State Statutes, wage determinations (prevailing wages) were prepared for different trades for each county from which labor for said project would be secured and are included and published in the Contract Specifications. Any wage determinations that are found not to be so promulgated do not relieve the Contractor from any responsibility for paying the prevailing wage rate of the trade in question. All laborers, workers, and mechanics must be paid the prevailing wage rate for work performed on the project. If the wage certification or published prevailing wages do not include a rate for a classification of work used on the project, the contractor shall contact the Department of Labor and Industry to obtain a rate.
- 7.3. In accordance with Minnesota Statutes 177.30 Sub. 4 and 177.43 Sub. 3, the Contractor and Subcontractor shall furnish to the Contracting Authority and the Project Owner all payrolls, of all workers on the project, a certified payroll report via E-mail as attachments, a State of Minnesota Prevailing Wage Payroll Report as a Microsoft Excel file and Statement of Compliance Form as a PDF file to the appropriate E-mail address:
 - .1 NOT USED.
 - .2 Use the E-mail address provided in the solicitation or as provided by the Agency.

The State of Minnesota Prevailing Wage Payroll Report and Statement of Compliance Form are available on the MMD website at www.mmd.admin.state.mn.us/mn02000.htm. Submit the completed and signed State of Minnesota Prevailing Wage Payroll Report as a Microsoft Excel file and the Statement of Compliance Form as a PDF file, no other payroll forms will be accepted to meet this requirement.

These completed forms must be furnished not more than 14 days after the end of each pay period. The Subject Line on the Contractor's and Subcontractor's E-mail must show the Firm name, the Contract Number or Purchase Order Number and the pay period ending date. Failure to maintain records as required by Minnesota Statutes 2008, Section 177.30 may be fined up to \$1,000 for each failure to maintain said records. This penalty is in addition to any penalties provided under section 177.32, Subd. 1. Contractors and subcontractors must keep these records for three years after the contracting authority has made final payment on the public works project.

For questions regarding the Prevailing Wage Laws, contact the Department of Labor and Industry at 651.284.5091.

7.4. The Contractor is solely responsible for payment of all required Prevailing Wage rates. Further, the State will not be liable for increased labor cost, errors in the rates or classifications, or changes to same prior to the awarding of Contracts. Information pertaining to the prevailing wage rates, prevailing hours of labor and hourly basic rates are included in this specification. Said wage rates must be posted in at least one conspicuous place for the employees working on the project.

- 7.5. Any Contractor, subcontractor, or agent, who, after executing a contract in compliance with this section, pays to any laborer, workman, or mechanic employed directly on the project, a lesser wage for work done on the project than the prevailing wage rate, shall be subject to fine and imprisonment. This misdemeanor is punishable by a fine of not more than \$700, or imprisonment for not more than 90 days, or both. Each agent or subcontractor shall furnish to the contractor evidence of compliance with this section. Each day a violation of this section continues is a separate offense.
- 7.6. In accordance with Minnesota Statutes 177.43, sub. 6a, upon issuance of a notice of a compliance order and withholding order issued by the Department of labor and Industry to the Contractor of subcontractor or another employer pursuant to section 177.27, sub. 4 for violation of sections 177.41 to 177.44, the Owner, as the contracting authority shall withhold payment of sufficient sum to the prime or general contractor on the project to satisfy the back wages assessed or otherwise cure the violation, and the owner must withhold the sum ordered until the compliance order has become a final order and has been fully paid or otherwise resolved by the Contractor.

8. Competitive Bidding of Trade Work and Equipment

8.1. Competitive Bidding

The Contractor will be responsible for construction means and methods and be required to provide competitive, sealed bids to the State Institution for all trade work, equipment and/or materials anticipated to be in excess of \$50,000.

Sealed bids will be opened jointly by the Contractor and the State Institution, and reviewed by the State Institution, and/or its agent(s), and the Contractor. The Contractor will select the lowest responsive and responsible bidder to perform the work. The Contractor will supervise and be responsible for all subcontracted work.

Unless determined by the Contractor to be in violation of other agreements, in order to ensure maximum participation of qualified subcontractors as well as fair and open competition, the selected Contractor must be able and willing to qualify and hire through the competitive bidding process both union and non-union subcontractors.

TARGETED GROUP AND ECONOMICALLY DISADVANTAGE PREFERENCES

In accordance with M.S. 16C, subdivision 6 and 7, eligible certified targeted group (T.G.) vendors will receive a six percent (6%) preference and certified economically disadvantaged (E.D.) vendors will receive a four percent (4%) preference on the basis of an award for this solicitation. Preference will only be allowed if responder is certified prior to the scheduled solicitation opening. A table of eligible targeted group businesses is located below. The preference is applied only to the first \$500,000 of the response. Vendors interested in becoming a certified vendor or to verify their T.G. eligibility and certification or ED certification, should refer to the Materials Management Division's website at www.mmd.admin.state.mn.us under "Vendor Information" or call the division's help line at 651.296.2600.

TABLE OF ELIGIBLE TARGETED GROUP AND ECONOMICALLY DISADVANTAGED BUSINESSES

STATE OF MINNESOTA DEPARTMENT OF ADMINISTRATION

TABLE OF GROUPS EXPERIENCING DISPARITY IN STATE OF MINNESOTA PURCHASING & CONTRACTING CONDUCTED UNDER MINN. STAT. CHAPTER 16C

(Based on the 2009 Disparity Study)

	Construction Prime Contracts	Construction Subcontracts	Professional Services	Other Services	Goods & Supplies
African American	X	X			X
American Indian	X	X	X		X
Asian American	X		X		X
Hispanic American	X	X	X	X	X
Nonminority Women	X	X	X	X	X
Disabled	X	X	X	X	X

Subcontractor Goals (For contracts over \$500,000)

For all subcontracting bidding with a cost of \$500,000 or more, the Contractor will be required to comply with the State's Targeted Group Business (TGB) program and established goals for TGB participation. The percentage goal amounts will be established by the owner prior to bidding the subcontractor work.

VETERAN OWNED BUSINESS PREFERENCE

In accordance with Minn. Stat. § 16C.16, subd. 6a and § 16C.19, eligible certified veteran-owned small businesses will receive a 6 percent preference on the basis of award for this solicitation. The preference is applied only to the first \$500,000 of the response.

Eligible veteran-owned small businesses should complete the Veteran-Owned Preference Form in this solicitation. Only eligible and certified, veteran-owned small businesses that provide the required form, will be given the preference. Eligible veteran-owned small businesses are certified small businesses of which the principal place of business is in Minnesota and that are majority-owned and operated by a veteran and are verified by the United States Department of Veterans Affairs as a veteran-owned small business. Eligible veteran-owned small businesses must be **currently** (at the time of solicitation due date) verified by the U.S. Department of Veterans Affairs prior to the solicitation opening date and time to receive the preference. Information regarding verification by the United States Department of Veterans Affairs may be found at http://www.vetbiz.gov.

8.2. Self-Performed Work

8.2.1. Incidental and Ancillary Work

The Contractor may perform incidental and ancillary work, including but not limited to work that is related to ensure jobsite safety and security, jobsite cleanliness and sanitation, limited demolition, and other incidental work that is necessary to enable subcontractors to perform their work in a timely manner.

8.2.2. Trade Work

Unless approved in writing by the State Institution, the Contractor may not self-perform trade work.

8.3. Design Guidelines

Sole source product specifications or requirements are prohibited unless approved in writing by the State Institution's Authorized Representative. The State Institution requires the Contractor to select and specify, at a minimum, 3 quality manufacturers/products, to establish minimum acceptable quality. If the Contractor determines that a process of substituting "equal or better" products during bidding is feasible, then the Contractor must specify the process and guarantee an "equal or better" product. Model or product numbers for approved alternate products must be cited in addenda when prior approvals occur.

8.4. Savings Derived From Competitive Bidding

All savings derived from competitive bidding shall be 100% credited to the State Institution, as calculated in Steps 1 through 3 below. Upon substantial completion of the work, the State Institution and Contractor shall reduce Sections 3.1.1 and 3.1.3 to the ("Adjusted Project Price"). The Adjusted Project Price shall be calculated as follows:

- Step 1 Add the net reduction in the Total Subcontractor Costs, Equipment Costs and Other Direct Purchase Costs from the amounts shown in Section III of this Exhibit to arrive at the Adjusted Project Total Direct Cost
- Step 2 Apply the Project Markup %'s as listed in Section III of this Exhibit to the Adjusted Project Total Direct Cost to arrive at the Adjusted Project Markup
- Step 3 Add the Adjusted Project Total Direct Cost and the Adjusted Project Markup to arrive at the Adjusted Project Price

Sample Work Order Contract -Exhibit B

Contractor's Fees

Contractor's Fees for Investment Grade Audit

The total compensation payable to the Contractor to fully perform the Contractor's Duties specified in Exhibit A, Section I of this work order contract shall be the lesser of the total obligation payable under clause 3 of this work order contract or an amount equal to the total square footage of building space that the State Institution authorizes, in writing, to be audited by the Contractor multiplied by \$0.XX.

Costs, markups and fees applicable to the cost estimates developed in the Performance of the Contractor's Duties as specified in Exhibit A, Section 1 of this work order contract shall not exceed the maximum amounts established in this Attachment 1, Master Contract. Markups shall not be applied to fees.

CONTRACTOR'S FEE SCHEDULE

1. Costs, Markups, and Fees

Cost, markups, and fees shall not exceed the maximums established in the tables below. Markups shall not be applied to fees.

1.1. Project Costs

The table below indicates the Contractor's proposed maximum percentage of the construction project's Total Project Price for each Project Construction Cost Category.

Project Construction Cost Category	Maximum Percent of Total Project Price	Self-Performed by Contractor or Subcontracted
Subcontractor Costs (Other Contractor Costs to Contractor)	N.A.	
Other Direct Purchases of Equipment, Material, Supplies by the Contractor (do not include subcontractor supplied purchases as they should be included above)	N.A.	
Design (state at right whether this shall be completed by the Contractor or subcontracted	X%	
Project Management (state at right whether this shall be completed by the Contractor or subcontracted)	X%	
Commissioning (state at right whether this shall be completed by the Contractor or subcontracted)	X%	
Training (state at right whether this shall be completed by the Contractor or subcontracted)	X%	
Warranty (state at right whether this shall be completed by the Contractor or subcontracted)	X%	
Construction Measurement and Verification (state at right whether this shall be completed by the Contractor or subcontracted)	X%	
Permits (markup allowed only if permits are acquired by Contractor)	X%	
Performance Bond	X%	

1.2. Project Markups

The table below presents the maximum percentage markups that the Contractor may apply to a Work Order Contract under this Master Contract. These markups may be applied to the Project Total Direct Cost to arrive at the Project Price Subtotal.

Project Markup	Maximum Percent Markup
Overhead Percent	X%
Profit Percent	X%

1.3. Audit Fee

If the Contractor conducts an Investment Grade Audit and Project Proposal pursuant to a Work Order Contract under this Master Contract, the Contractor shall charge no more than an amount equal to the total square footage of building space audited under the Work Order Contract multiplied by the maximum cost per square foot specified below:

	Maximum cost per sq.ft.
Investment Grade Audit and Project Proposal	\$/sq.ft.

2. Open Book Pricing

The Contractor shall fully disclose all costs of materials and labor purchased and subcontracted by the Contractor and a list of hourly rates and position descriptions for labor or services provided by the Contractor. Estimates for number of hours required for the project and deviations of these budgeted hours shall require prior written approval by the State or shall not be paid. Contractor shall maintain cost accounting records on authorized work performed under actual costs for labor and material, or other basis requiring accounting records. Contractor shall retain these record and afford the State access thereto pursuant to Clause 9: State Audits. Costs will be evaluated through price analysis to compare costs with reasonable criteria such as established catalog and market prices or historical prices. The pricing methodology and individual cost markups disclosed during preliminary contract negotiations will be expected to be applied, providing the scope and size of the project remain the same as assumed when markups were disclosed.

Attachment 1

Measurement and Verification (M&V) Guidelines For Guaranteed Energy Savings Program In State of Minnesota Facilities

Attachment 2

Systems Startup and Commissioning (Cx) Guidelines For Guaranteed Energy Savings Program In State of Minnesota Facilities

AIA-201-2007 General Conditions of the Contract for Construction